

**The Assembly of Pro-Democratic  
NGOs of Belarus**

# **Ban on the activities of unregistered public associations in Belarus**

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Article 193<sup>1</sup>  
of the Criminal Code





Эніра Браніцкая  
была асуджаная  
ў 2006 годзе да шасьці  
месяцаў арышту  
за ўдзел  
у незарэгістраванай  
арганізацыі

In 2006 Enira Branickaja  
was sentenced  
to the 6-month arrest  
for participation  
in the activities  
of an unregistered NGO



Паводле артыкула 193<sup>1</sup> Крымінальнага кодэксу, нават  
святкаваньне Калядаў з Дзедам Марозам можа разглядацца  
як дзейнасць незарэгістраванага аб'яднанья

According to Article 193<sup>1</sup> of the Criminal Code, even celebrating  
Christmas with Santa Clauses can be treated as organizing  
activities of non-registered NGOs

**The Assembly of Pro-Democratic NGOs  
of Belarus**

**Ban on the activities  
of unregistered public  
associations in Belarus**

Article 193<sup>1</sup> of the Criminal Code

Miensk  
2010

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# CRIMINAL CODE OF THE REPUBLIC OF BELARUS

## **Article 193<sup>1</sup>. The illegal organization of the activities of a civic association, religious organization or foundation or participation in those activities**

The organization of activities or participation in the activities of a political party, other public association, religious organization or foundation in respect of which a decision of the public authority on its liquidation or suspension of its activities has entered into legal force, as well as the organization of and participation in the activities of political parties, other public associations, religious organizations or foundations which has not obtained state registration — punishable by fine or arrest for up to 6 months, or imprisonment for a term not exceeding 2 years.

1. By participating in the activities of political parties, other public associations, religious organizations or foundations in this article there are meant actions aimed at achieving the objectives of referred associations, organizations or foundations, including those identified in the organizations' statutory and other documents.

2. This article shall not apply to the organization of activities or participation in those of political parties, other public associations, religious organizations or foundations in respect of which a decision of the public authority on their suspension has entered into force, in case when these activities are aimed at elimination of the violations that had given rise to suspension of activities, or at the organization of or participation in the activities of political parties, other public associations, religious organizations or a foundations which finally obtained state registration.

3. A person who voluntarily terminates his/her activities, punishable under this article, and informs government bodies about this decision, shall be exempt from criminal liability if he/she has not committed other crime. This provision does not apply to persons who have committed similar acts in 2 years following the voluntary termination of activities, punishable under this article.

## **INTRODUCTION OF ARTICLE 193<sup>1</sup> INTO THE CRIMINAL CODE: "ANTI-REVOLUTIONARY LAW"**

An important issue during the preparation of Belarusian authorities for the presidential elections in 2006 was the improvement of political repression mechanisms. Just before the elections several regulatory legislative acts were issued. They significantly limited the opposition's scope of political activities and enhanced penalties for their so-called "political" crimes.

During previous election processes all participants felt pressure. The means of the repressions were different: authorities used articles from the Code of Administrative Violations (those concerning violation of organizing mass actions, participating in activities of unregistered public associations); dispositions of the Electoral Code regarding the illegality of certain methods of political struggle or agitation; dispositions of the Law "On Political Parties" and Law "On Public Associations" concerning restriction to create the pre-election coalitions, restriction on the participation of public associations in political struggle); statements from the Law "On Rallies and Demonstrations". But the political tensions of 2006 and the apparent threatening possibility of a "color revolution" in Belarus forced the authorities to introduce new, more brutal and strict methods of suppressing political activities.

One of the most significant steps undertaken by the government was introducing a number of changes to the Criminal Code, which established criminal penalty for certain forms of political and civil activity.

On November 25, 2005 in the first reading and on December 2, 2005 in the second reading, the House of Representatives of the Belarusian Parliament adopted amendments to the Criminal Code and to the Criminal Procedure Code, which increased the liability for "actions against people's and public safety". The bill was sent to the Parliament by the President on November 23, 2005, moreover, it was marked as "urgent".

The bill was discussed on an expedited basis, information on it was spread broadly in Belarus, as well as in many other countries. Even MPs of the entirely dependent Belarusian Parliament expressed their concern in regard to the extremely severe measures proposed in the bill. But in the end, under the pressure from the Presidential Administration and from KGB (which developed the bill), the amendments were adopted. In the first reading just one of 95 deputies of the House of Representatives voted against the bill. In the second reading 4 Deputies had the courage to vote against the odious bill, while 97 supported the amendments. Soon the Council of the Republic unanimously approved the

amendments almost without discussing them. After the bill had been signed by the President on 2<sup>nd</sup> January 2006 and just after the election campaign had been launched, the bill with the amendments came into force.

The bill was presented in the Parliament by the Head of KGB Ściapan Sucharenka, he was actually "promoting" the bill, so it received the title "Sucharenka's Law" in the media. The Head of the KGB stated openly that the main objective of the new law is "to keep down the wave of large-scale meetings that opposition was preparing for the election campaign". When presenting the bill in the Parliament, Mr. Sucharenka said: *"The leaders of the oppositional political parties on purpose give false information on the political process in Belarus. The main aim of these statements is to force Western politicians to impose sanctions against Belarus. Oppositioners wish to seize power and change the constitutional regime, organizing a revolution of the kind which happened in Georgia in 2003, in Ukraine in 2004 and in Kyrgyzstan in 2005".*

Mr. Sucharenka was convincing MPs that on the territory of Belarus existed several oppositional military camps. Those militants, according to Sucharenka, were prepared for participation in mass riots during presidential elections. The Head of the KGB said that such camps existed in Krupki and Vialejka districts and, apart from that, such camps functioned abroad, and their main aim was to prepare "color" revolution in Belarus. Mr. Sucharenka stressed that nowadays we face a real industry of preparing "color revolutions" collaborators and said that the United States used the resources of international and foreign non-governmental organizations to prepare special military groups for organizing large-scale meetings in Belarus. According to Mr. Sucharenka, the main organizers of street actions had to become unregistered youth organizations "Young Front" ("Malady Front") and "Zubr." However, the Head of the KGB saw the main threat to the national safety not in the speeches of the oppositional leaders, who, in his opinion, were not supported by society anyway. Mr. Sucharenka treated the increasing pressure from the West as the main threatening factor.

During the discussion of the odious bill, a special leaflet was disseminated among the MPs. It contained "explanation" of the necessity to adopt severe amendments in the law: for instance, there was a list of more than 30 foreign and international organizations that allegedly "financed or organized activities against Belarusian regime". The list included American National Endowment for Democracy and International Republican Institute, Eastern European Democratic Center and Stefan Batory Foundation in Poland, Polish-American Institute for Democracy in Eastern Europe, Slovak Pontis Foundation and others. It is also important that Mr. Sucharenka mentioned that the new bill was directed against certain persons.

The Criminal Code has been completed with several new articles. In particular, with Article 193<sup>1</sup> ("The illegal organization of the activities of a civic association, religious organization or foundation or participation in those activities"). The article has been complemented with the following statement: "The same actions connected with organization or management of a political party,

other public association or a religious organization, specified in Part 1 of the present Article, which have not passed the state registration in the established order, shall be punished by arrest for the term of up to six months or imprisonment for the term of up to three years." In the circumstances when the majority of non-governmental organizations in Belarus are working without registration, because it is almost impossible for independent NGOs to get registered, this article practically urges to treat thousands of Belarusian citizens as criminals. A person who stops his or her activities in such an organization voluntarily and tells about the fact to a relevant public authority, will not be subject to criminal responsibility if there are no elements of another crime in his/her actions. Article 193 ("Creating a civic association or religious organization, which violates human rights, as well as leadership in such organizations") introduced a rule that increased penalty for this crime if it had been committed by an unregistered organization (now it is punishable by the arrest for up to 6 months, or by imprisonment for up to 3 years).

Article 293 "Riots" has been completed with the third part, according to which educating or training other persons to participate in mass riots, or financing these activities shall be punished by arrest for a term of up to 6 months or imprisonment for the term of up to 3 years. Given that article 293 has already included provisions on the organization of mass disturbances (Part 1 of the article), this change can mean criminalization of those actions, **which are actually not riots**. In fact, now not even an attempt of riot, but the mere *intention* to organize it can be punished. There is a high possibility that this new provision may be used even towards any educational program, which, in opinion of public officials, might in the future threaten the sustainability of the authoritarian regime in Belarus. Haziness of definitions which are used in article 293 ("teaching or training other persons..." and "financing or providing other material support") **can let officials use it in any situation, prosecuting people even if they actually have not committed any offense.**

Article 342 of the Criminal Code was completed with a provision which said that the education or training of other persons to participate in group activities which violate public order (like disobedience to legitimate demands of public officials or actions that cause the disruption of transportation, of the work of enterprises, institutions or organizations), as well as financing such activities and providing them with any other material help is punishable by arrest for up to 6 months or imprisonment for up to 2 years. It is obvious that this innovation is connected with the previously discussed provision of Article 293 and creates the possibility of bringing to criminal responsibility those people who are involved in educational activities in the civic sector. **Under this article such obviously non-violent activities as non-violent strikes, flash mobs, hunger strikes and others might be treated as crimes.**

According to the new version of the Criminal Code, the punishment for public calls for seizing state power or violently changing the constitutional order became more severe. Now (see Article 361 of the Criminal Code) it is punishable

by arrest for up to 6 months or imprisonment for up to 3 years. This article also greatly expanded the object of protection and increased the range of possible means of disseminating public calls for seizing state power (they might be expressed in public as a wish to change constitutional regime, to commit terroristic act, to make a diversion or to commit any other attempt to impair national security, sovereignty and territorial integrity of the Republic of Belarus, etc.). The second part of Article 361 says that such public calls shall be punished especially severely if they are addressed to foreign states, foreign or international organizations: in this case they shall be punished by arrest for up to 6 months, or imprisonment for up to 3 years (and if the calls will be disseminated in the media, the penalty shall be even more severe — imprisonment from 2 to 5 years). It is obvious that this vague definition of criminal actions without specifying possible methods of committing a crime may convert this article into an effective means of “dealing” with the freedom of speech and political opponents in the country. **In fact, any expression of dissatisfaction with current regime may be treated as a “crime” now.**

The Criminal Code has also been completed with a new article 369.1 “Defamation of the Republic of Belarus”. Defamation is defined as “Providing foreign state, foreign or international organization with false information about political, economical, social, military or international situation in the Republic of Belarus, about its citizens’ or government’s legal status”. Such activities shall be punishable by arrest for up to 6 months or imprisonment for the term of up to 2 years. Human rights defenders and journalists have expressed concern that this article seems to be the one specially designed to persecute independent journalists and human rights defenders.

The Criminal Code already contains an article on calumny, so the new one (369-1) may be applied exclusively against the political opponents. **Article 369.1 is a classic example of a political criminal offense.**

**This provision is unusual for Belarusian law, and in some way it contradicts the principles of territoriality of criminal law.** The same can be said about the new regulation imposed by Article 382— “Unauthorized appropriation of the title or powers of a government official with the purpose to participate in negotiations or other meetings with foreign States, foreign or international organizations”. Basically, this article makes it possible to punish Belarusian (or even foreign!) citizens for actions committed not only in Belarus, but also abroad.

Human rights defenders in Belarus have opposed the imposing of “political” articles in the criminal law. Human rights defender Aleh Hulak from the Belarusian Helsinki Committee said: *“The cynicism of government officials is really impressive, they even don’t try to hide that everything is done in connection with future presidential elections”*. But now Belarusian secret services have a perfect “legal” justification for political repressions and criminal prosecution of human rights activists and all other opponents of current regime. The majority of observers believed that the main purpose of imposing severe criminal articles

was intimidation of people before the start of the election campaign. The second purpose was to stop the work of non-governmental and “oppositional” political organizations through the criminal prosecution of activists. The third purpose was the further informational isolation of Belarusian society.

Article 193<sup>1</sup> started being used almost immediately after the amendments in the Criminal Code had been made. The first ones charged under the article were the activists of the civil initiative “Partnerstva” (“Partnership”) who specialized in the monitoring of the elections. Thus, in fact, the national system of gaining alternative voting results was destroyed. Later on new criminal cases against civic activists (including those from youth organizations) were launched.

## **EXPERT OPINION**

### **on the conformity of article 193<sup>1</sup> of the Criminal Code of the Republic of Belarus to the Constitution of the Republic of Belarus and international acts ratified by Belarus**

The present independent public legal examination has been held on the Decision of the Board of the Republic's Human Rights Public Organization "The Belarusian Helsinki Committee" (hereinafter — the BHC) of May 5, 2007, made on the basis of Paragraph 2, Point 2.4, of the Charter of the BHC.

The object of examination is the conformity of Article 193<sup>1</sup> of the Criminal Code (hereinafter — the CC) of Belarus to the Constitution of the Republic of Belarus and its international treaties in the sphere of human rights.

**1.** The Law of the Republic of Belarus of 15.12.2005, No. 71-3 "On Making Changes and Additions to Certain Legislative Acts of the Republic of Belarus on the Issue of Strengthening Responsibility for the Actions Directed Against the Person and Public Safety" changed in Chapter 23 of the CC the wording of Article 193 of the CC and introduced a new Article 193<sup>1</sup>, which establishes responsibility for illegal organization of the activities of a public association, religious organization or foundation (fund), or for participation in the activities thereof.

Article 193 of the CC has been complemented with the following:

"The same actions connected with organization or management of a political party, other public association or a religious organization, specified in Part 1 of the present Article, which have not passed the state registration in the established order, shall be punished by arrest for the term of up to six months or imprisonment for the term of up to three years."

Part 1 of Article 193 of the CC took as its basis the definition of the crime, which had been given in the old wording of Article 193 of the CC, but with account of terminological changes connected with updating of the legislation on public associations and political parties. The notion of a political party was isolated from the notion of a public association, and instead of the term "religious association" the term "religious organization" was adopted.

Article 1 of the Law of the Republic of Belarus of 05.10.1994, No. 3266-XII "On Political Parties" (in the wording of 26.06.2003) sets up that "a political party is the independent association of citizens, formed on the basis of individual voluntary membership and operating within the bounds of the Constitution and Laws of the Republic of Belarus, promoting the revealing and expression of citizens' political will and participating in the elections."

Article 1 of the Law of the Republic of Belarus of 04.10.1994, No. 3254-XII "On Public Associations" (in the wording of 12.07.2007) defines a public association as "a voluntary association of citizens in the order established by the legislation, who have united on the basis of the generality of their interests for joint realization of civil, social, cultural and other rights." One should remember that the "Law on Public Associations" does not cover political parties, trade unions, religious organizations (unions or associations thereof), other public formations and civil initiatives, the order of establishment and activity thereof shall be established by the respective legislative acts.

Thus, although a political party is a variant of a public association, but by virtue of constitutional provisions and particularities of statutory tasks it acquires a special status (since it is related to the political will of citizens). The same refers to religious organizations also by virtue of their particularities.

Article 9 of the Law of the Republic of Belarus of 17.12.1992, No. 2054-XII "On Freedom of Religion and on Religious Organizations" (in the wording of 29.11.1999) defines that religious organizations in the Republic of Belarus are religious communities, monasteries, religious brotherhoods, missionary societies, missions, spiritual educational institutions, as well as religious associations with their managements and centres. Religious organizations shall act on the basis of their charters (regulations) and have the status of legal entities.

Thus, the above Laws are covering only public associations of various orientations, the operation of which assumes, as a rule, the fixed individual membership, the presence of the charter (regulations) and the status of legal entities.

**2.** The new wording of Part 1 of Article 193 of the CC has expanded the sphere describing the illegal activity of a political party, other association or religious organization by including the following alternative version of behaviour: "or connected with impeding citizens to enjoy their state, public or family duties."

For correct understanding of the sense of Part 1 of Article 193 of the CC, the provisions of Part 2 of the same Article are important. Part 2 of Article 193 of the CC contemplates increased responsibility for the same actions, but in the cases when the respective party, other public association or religious organization has not passed the state registration in the established order.

Hence, Part 1 of Article 193 of the CC is spreading its action on the cases when a respective association has been created, registered in the established order, but contrary to the aims or tasks proclaimed by the Charter is engaged in absolutely different activities. In this case, to establish the subjective (mental) element of the crime it is necessary to prove that the association (organization) was registered with the aim to conceal violent or other illegal actions in relation to citizens.

The subject of this crime is specified as follows:

— In Part 1 of Article 193 of the CC — the founder or the head of the respective association (organization);

— In Part 2 of Article 193 of the CC — the actual organizer or the head of the non-registered public association or religious organization.

The sanction was also changed. Within Part 1 of Article 193 of the CC, this crime still refers to the category of the crimes not representing any great public danger. But the sanction was toughened: the punishment in the form of a fine and deprivations of the right to take certain positions was excluded, and the punishment in the form of imprisonment for the term of up to two years was introduced. Within Part 2 of Article 193, the crime is referred to the category of less grave crimes.

**3.** Under Article 193<sup>1</sup> of the CC, citizens are prosecuted in the criminal order for organization of the activities, or participation in the activities of a political party, other public association, a religious organization or a foundation, in relation to which there is an inured decision of the authorized state body about their liquidation or suspension of activities, or which have failed to pass the state registration in the established order. The sanction of the Article assumes a fine, or arrest for the term of up to 6 months, or imprisonment for the term of up to 2 years.

The essential elements of the crime are formal by their structure. The direct object of the crime is in the public relations, which ensure the existing order of registration and operation of political parties, other public associations, religious organizations or foundations. (It appears that by its object this crime refers more likely to the group of offences against the order of ruling.)

The objective part of this crime is described in the Law in two variants of criminal behaviour:

1) Organization of the activity or participation in the activities of a political party, other public association, religious organization or foundation, in relation to which there is an inured decision of the authorized state body on their liquidation or suspension of activities;

2) Organization of the activity or participation in the activities of a political party, other public association, religious organization or a foundation, which have failed to pass the state registration in the established order.

Within the first variant of behaviour, the organization of the activities of the respective association, organization or foundation is understood as certain organizational actions directed towards continuation of functioning of the respective association, which is caused, first of all, by the statutory tasks and aims of this association. The legal interpretation has been given to the notion "participation in the activities."

According to Part 1 of the remarks to Article 193<sup>1</sup> of the CC, participation in the activities of a political party, other public association, religious organization or foundation should be understood as the actions directed towards achievement of the aims of the above associations, organizations or foundations, including those defined in their statutory and other documents.

By the sense of the law, at the first variant of behaviour, organization of the activities or participation in the activities should take place after inuring the decision of the authorized state body about liquidation or suspension of the activities of the respective association, organization or foundation.

The decision on liquidation is made by the court under the claim of the registering body (in relation to Republic's (national) organizations and political parties — by the Supreme Court of the Republic of Belarus). The decision on suspension of the activities is also made, as a rule, on the basis of a court ruling. At the same time, for example, the Republic's body for religious matters has the right, provided the respective grounds are available, to suspend the activities of religious associations, monasteries, monastic communities, religious brotherhoods and sisterhoods, religious missions and spiritual educational institutions. The decision of the registering body to suspend the activities can be appealed against in the judicial order.

However, not any decision of the authorized body on suspension of activities refers to Article 193<sup>1</sup> of the CC. Thus, according to Part 2 of the remarks to Article 193<sup>1</sup> of the CC, the action of this Article does not cover the cases, where in relation to the respective association there is an inured decision of the authorized state body to suspend its activities, which is directed towards elimination of the violation that has formed the basis for suspension of its activities.

At the second variant of behaviour, the crime is recognized to be in the organization or participation in the activities of the respective association, if it has not passed the state registration. According to the rules as stated in Part 2 of the remarks to Article 193<sup>1</sup> of the CC, this Article does not cover the organization of the activities or participation in the activities of the respective association, which are connected with their state registration in the established order.

The crime is considered over from the moment of committing the respective action. From the subjective viewpoint, the crime is characterized by a direct intention (express malice). The subjects are the organizers (heads) or active participants.

Part 3 of Appendices to Article 193<sup>1</sup> of the CC contains a special norm about active repentance. A person can be exempted from criminal responsibility provided the following conditions are in place:

1) A person has voluntarily stopped the actions contemplated by Article 193<sup>1</sup> of the CC;

- 2) An application of the person to the state bodies to this end is available;
- 3) There are no elements of some other crime in the actions of this person.

Part 3 of remarks to Article 193<sup>1</sup> of the CC is not extended to the persons who have committed similar actions within two years after voluntary termination of the activities contemplated by this Article.

This is the sense of the introduced restrictions of the right to freedom of association, which is nowadays prosecuted in the criminal order under Article 193<sup>1</sup> of the Criminal Code.

**4.** Still earlier, the Ministry of Justice of the Republic of Belarus had adopted Statement No. 49 of 13.09.2005 "On Certain Issues of Founding Public Associations and Their Unions (Associations)." This legal act stipulates that "when holding actions of political nature and possible creation of blocs of political parties and trade unions, same as creation of any "movements," "initiatives," "coalitions," which unite citizens or legal entities, one should be guided by the current legislation and the present Statement." The norms of the Statement prescribe the need of state registration of "blocs," "movements," "initiatives" and "coalitions" as specified in point 1 of the Statement, and reference is made to Article 7 of the Law of 4.07.1994 "On Public Associations" (with amendments and additions) that prohibits any activity of non-registered public associations.

It is necessary to note here that according to the current legislation only public associations, as a special form of citizens' association, enabling to acquire the rights of a legal entity, are subject to state registration. The very concept of "legal entities" is introduced by Article 44 of the Civil Code of the Republic of Belarus. Other forms of realization by citizens of their constitutional right for the freedom of association, not demanding to create a separate independent subject of civil legal relations, register the membership, regulate the procedures of electing managing bodies and decision-making, purchase of isolated property, may carry out their activities without creating a public association and, accordingly, without any special registration. Their public activities are not regulated by the Law "On Public Associations," and they can bear responsibility for their actions only in the cases as stipulated by the current legislation. This can be civil-legal, disciplinary, administrative or criminal responsibility.

For example, the citizens who are pursuing their non-commercial objectives can agree and act on the basis of an agreement "about joint activities" or in the form of a simple comradeship (Article 911 of the Civil Code). Spreading the scope of the Law "On Public Associations" on such forms of citizens' associations would mean an actual introduction of a ban on any activities of public formations without formation of a legal entity and, accordingly, without legal registration, for example, fan-clubs, parent committees in kindergartens and schools, joint actions of tenants aimed to improve the pre-house territory, as well as of other forms of citizens' self-organization mentioned above. The requirement of state registration of this sort of citizens' unions and groups is a breach of their right

to freedom of association; it is contradictory to the current legislation and common sense.

In our opinion, by adopting Statement No. 49, the Ministry of Justice had surpassed the limits of its competence, both by the form and the essence, as defined by the Regulations "On the Ministry of Justice of the Republic of Belarus" (Decree of the Council of the Ministers of the Republic of Belarus No. 1605 of 31.10.2001). However, the Council of Ministers, where the BHC had appealed, evaded from considering the application and sent it to the Ministry of Justice whose actions had been appealed against.

The BHC experts have interpreted the adoption of Statement No. 49 as an illegal introduction of restrictions into enjoying the right to freedom of association, guaranteed by the Constitution of the Republic of Belarus and its international treaties, in particular, the International Covenant on Civil and Political Rights. It is obvious that the normative instructions of the Statement are intended, first of all, to justify administrative and criminal prosecutions against citizens.

**5.** The analysis of dispositions of Articles 193 and 193<sup>1</sup> of the CC shows that bringing to the criminal responsibility is possible not only for the activities, which prejudice the national safety and rights and freedoms of citizens, but also for organization of the activities or participation in the activities of any public formation that is not registered in the established order (a publicly organized civil initiative) irrespective of orientation of such activities and consequences thereof.

Thus, according to the valid norm of the CC, any organized initiative of citizens who are pursuing good intentions and acting for the benefit of the society but without registration of their formation may entail criminal prosecution and punishment only for violation of the order of ruling (the established registration procedure of public associations). Meanwhile, the objective assessment of such behaviour has obviously nothing to do with the acts pursued in the criminal order.

However, it is exactly this approach to imposing criminal responsibility that has been perceived by judiciary practice. Thus, in February 2006, the Court of the Centralny District of the city of Minsk sentenced citizens T. Drančuk, M. Astreika, A. Šalajka, E. Branickaja to different terms of deprivation of freedom after finding them guilty of organization of the activities and participation in the activities of the "Partnership" non-registered public association. These young people had set an aim to supervise the then held elections to the House of Representatives of the National Assembly of the Republic of Belarus. When considering their case, the Court disagreed with qualification of their actions under Article 193 of the CC, which had been given by the bodies of the Prosecutor's Office, and re-qualified them under Article 193<sup>1</sup> of the CC. The verdict noted that "the state accusation has failed to present evidences to the court, and the judicial session did not reveal any of such evidences, which could testify that the above activities

had entailed any encroachment on the rights, freedoms and legitimate interests of citizens." That is, the court has established that the activities of the said public formation and its participants were not directed towards causing damage to the values defended by the Constitution.

In July 2006, under similar circumstances, with justification of the action under Article 193<sup>1</sup> of the CC, the same Court convicted Dzmitry Daškevič, one of the activists of the "Malady Front" (Young Front).

The Department of the State Security Committee (KGB) of the Republic of Belarus for Minsk and Minsk Region has initiated a criminal case under Article 193<sup>1</sup> of the CC against D. Fiedaruk and A. Korban, activists of the same "Malady Front." The statement on opening the criminal case runs that young men were brought to criminal responsibility "for the actions pursuing the following aims and methods: uniting and training young people on the basis of the Belarus national idea, building of the civil society on the basis of democracy, free market and other aims, as well as the methods of attaining the aims, including through holding mass actions, conducting enlightenment work and sociological studies, publishing newspapers and other information materials, during the time period from September 2006 to the present time."

Our attention is attracted here by the fact that the aims, as revealed by the investigator, which were pursued by Fiedaruk and Korban, were compliant (at least, nobody has challenged it) with the interests of the Belarusian state and inflicted no harm to the society. They are completely based on the rights and freedoms stipulated by the Constitution and Belarus' international obligations in the sphere of human rights. It is necessary to especially note here that even in the "execution" year of 1937 in the epoch of mass repressions, the bodies of the People's Commissariat of Internal Affairs (NKVD), while disclosing multiple "anti-soviet organizations," used to bring their members to responsibility for their hostile activities against the Soviet State, though usually the "activities" were invented by inspectors.

Initiation of a criminal case with the formulation as specified by the investigation can be justly regarded as a factual pullback of the Belarusian state away from the democratic way of development, which is an obvious contradiction to the Constitution of Belarus and its international treaties, in particular, to the International Covenant on Civil and Political Rights. This Covenant has become, after its ratification, an integral part of the national legislation of the Republic of Belarus (see the Laws "On Normative Legal Acts of the Republic of Belarus" and "On International Treaty of the Republic of Belarus") and should be applied as a direct-action law.

It is known that the organizers of the "Malady Front" for at least three times had tried to register the public association in the established order at the Ministry of Justice. However, every time they were rejected for various bureaucratic cavils; and the young people continued their activities outside the bounds of a registered association.

It has been established by the investigation that their activities have not entailed any violations of the constitutional rights and freedoms of citizens. In view of these circumstances, the BHC had addressed P. Miklaševič, General Public Prosecutor, and S. Sucharenka, Chairman of the KGB, with a demand to stop the criminal case illegally initiated against Dzmitry Fiedaruk and Aleh Korban. However, this well-motivated application of the BHC has no legal response.

**6.** It should be mentioned here that as of the enactment of Article 193<sup>1</sup> of the CC, in Chapter 14 of the Administrative Code (hereinafter — the AC) (administrative offences encroaching on justice and the established order of ruling) the then valid Article 167-10 contemplated administrative responsibility for the activities of political parties, trade unions or other public associations, which have failed to undergo state registration (re-registration) in the established order, including increased responsibility for recurrence of this sort of offence, within a year after application of administrative punishment — fine of up to 100 basic values or arrest for up to 15 days.

The new AC that came into force since March 1, 2007, has Article 9.9, establishing the administrative responsibility for founding a religious organization or for managing such without state registration in the established order, or for off-the-charter activities of religious organizations. Part 5 of this Article contemplates enhanced responsibility for the actions accomplished repeatedly within one year after imposing an administrative penalty for the same offences — a fine from 14 to 20 basic values.

Close by the legal sense to the above administrative offences are the actions contemplated by Article 23.39 of the AC (arrogation). This norm establishes illegal behaviour as follows: "A self-willed execution of one's valid or supposed right, accomplished through breaching the order, established by the legislation of the Republic of Belarus." In this case, while Article 9.9 is placed in Chapter 9 (administrative offences against one's health, honour and dignity, human and citizen's rights and freedoms), Article 23.39 is placed in Chapter 23 (administrative offences against the order of ruling). The acts contemplated both in Article 167-10 of the AC (in the wording before 1.03.2007) and in Articles 9.9 and 23.39 of the AC (in the new wording) coincide by their object and subject. The study of the dispositions of the administratively punishable offence under Article 167-10 of the AC (previous version), Articles 9.9 and 23.39 (of the current AC) and the criminally punishable act under Article 193<sup>1</sup> of the CC indicates that they deal with practically same arbitrary actions connected with organization or participation of citizens in the activities of parties, public associations, including religious organizations, which have been liquidated (suspended) by the court or failed to pass the state registration in the established order.

Our attention is called by the fact that in violation of the requirements of Article 11 of the CC (concept of a crime); the disposition (hypothesis) of Article 193<sup>1</sup> of the CC fails to include the circumstances that indicate the onset of any harmful consequences or a possible onset thereof. Meanwhile, Article 193<sup>1</sup> of the CC is placed in Chapter 23 "Crimes against Human and Citizen's Constitutional

Rights,” the title and interpretation of which assumes the onset of harmful consequences (a possibility of such consequences), relating to violations of citizens’ constitutional rights.

Thus, when making comparison of the norms under study, we see that the same acts forbidden under a threat of punishment are prosecuted both in the criminal and in the administrative order. And the criteria of differentiation among these essential elements of offence according to the rules, established by part 4 of Article 11 of the CC, are defined nowhere.

## **7. When studying the disputable norm, we proceed from the following.**

Article 2 of the Constitution of the Republic of Belarus proclaims as follows: “The individual, his rights, freedoms and guarantees for their attainment manifest the supreme goal and value of society and the State.” While part 1 of Article 21 of the Constitution secures that “safeguarding the rights and liberties of the citizens of the Republic of Belarus shall be the supreme goal of the State.”

The Constitution of Belarus secures one’s right for the freedom of association (Article 36).

The analysis of constitutional provisions (Articles 5, 16, 34, 23, 44, etc.) shows that a mandatory precondition for admission of any restrictions of the freedom of associations, other rights and freedom guaranteed by the Constitution, shall be the necessity of such restrictions to ensure the defence of national security, public order, protection of morals, and rights and freedom of other persons. The above list is exhaustive and not subject to any wider interpretation.

The above constitutional provisions correlate rather adequately with the rules of Article 22 of the International Covenant on Civil and Political Rights, as well as with other documents establishing universal principles of international law. It is necessary to note here that the practice of competent international bodies (European Court for Human Rights, Committee for Human Rights of the United Nations, etc.) is oriented towards admissibility of minimal restrictions only, which are certainly necessary in the democratic society.

The BHC has lodged an application to the Constitutional Court of Belarus asking to examine the constitutionality of the introduced norm (Article 193<sup>1</sup> of the CC). However, the Court has refused to initiate the proceedings and consider the issue on the merits, having referred to Article 116 of the Constitution that specifies the subjects, having the right to initiate this sort of cases. Thus, the Court has ignored the norms of the Law on the Constitutional Court, the Regulations on its operation and has evaded from following the requirements of Articles 40 and 50 of the Constitution on mandatory consideration of citizens’ applications for protection of their constitutional rights and freedoms.

In connection with the aforesaid, I have arrived to the conclusion that Article 193<sup>1</sup> of the CC does not comply with the Constitution of the Republic of

Belarus and the adopted international obligations in the sphere of human rights, in particular, the right for freedom of associations.

According to Article 112 of the Constitution, "the courts shall administer justice on the basis of the Constitution, the laws and other enforceable enactments adopted in accordance therewith. If, during the hearing of a specific case, a court concludes that an enforceable enactment is contrary to the Constitution, it shall make a ruling in accordance with the Constitution and raise, under the established procedure, the issue of whether the enforceable enactment in question should be deemed unconstitutional."

To eliminate the legal collision in a specific case the court shall apply this constitutional provision in the established order so as not to expose an innocent to criminal punishment.

Hary Pahaniajla, Legal expert of the Belarusian Helsinki Committee.

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For reference:

Mr Pahaniajla, Hary, graduated from the Law Department of the Belarusian State University in 1969, worked as an advocate (1970–1971), People's Judge of the Bychaŭ District of the Mahileu Region (1971–1976); in the structure of the Ministry of Justice of the Republic of Belarus in the positions of: leading specialist of the Department of Judicial Bodies (1976–1978), head of the Bar Division (1978–1988); manager of the legal consultancy office of the Saviecki District of Minsk (1989–1998); President of the Union of Lawyers of Belarus (1991–1993); member of Interregional Bar of the Guild of Lawyers of the Russian Federation (1998–2003). Currently, Mr Pahaniajla is the Chairman of the Legal Commission of the BHC.

## THE PRACTICE OF ARTICLE 193<sup>1</sup> ENFORCEMENT

Article 193<sup>1</sup> of the Criminal Code was introduced just before the Presidential elections 2006 and became used to suppress "unwanted" organizations. Already in 2006 six people performing activities on behalf of unregistered initiatives were accused under this article: the representatives of unregistered initiative "Partnerstva" ("Partnership") which was monitoring the election process and the representatives of the unregistered "Malady Front" ("Young Front"). Among the 6 accused only one got a fine, 5 others were condemned to arrest or imprisonment. In 2007 the number of the accused under Article 193<sup>1</sup> increased to 9 persons, though the punishment was not usually connected with imprisonment (except one case). During the period of 2008 and the first half of 2009 two people were charged under Article 193<sup>1</sup>. At the moment it is known about one investigational case connected with the Article.

On the 1<sup>st</sup> of February, 2010 human rights defenders possessed information about 17 persons that had been accused under Article 193<sup>1</sup>. No case was solved in favor of the accused, all of them were found guilty. Also a number of cases against certain people was launched, but then the investigation was terminated (those cases were mostly connected with the activists of "Young Front"). Many civic activists received official warnings from the prosecutor's office and were required to cease their activities in unregistered organizations under the threat of criminal prosecution.

### ***Criminal cases:***

#### **Year 2006**

- ***Eduard Zieliankoŭ***

Young activist from Žlobin, Eduard Zieliankoŭ, was detained on 13 March 2006 for drawing a graffiti. A criminal case under the Article 193<sup>1</sup> (participation in the activities of unregistered organization) and Article 339 of the Criminal Code (disorderly conduct). The investigation was held by the department of Internal Affairs of the Homiel central district.

In early June 2006 the disorderly conduct charges against Eduard Zieliankoŭ were withdrawn for the lack of evidence, but the charge for performing activities on behalf of an unregistered organization "Young Front" was not dismissed. Thus, the court of the Žlobin District charged Eduard Zieliankoŭ with a fine on the basis of Article 193<sup>1</sup>.

- **Mikalaj Astrejka**
- **Enira Branickaja,**
- **Cimafiej Drančuk**
- **Alaksandr Šalajka**

On 22 February these four members of the unregistered public initiative "Partnerstva" ("Partnership") which was monitoring presidential elections, were detained. KGB workers searched the offices of the organization in Miensk and regions, as well as the flats of the activists, and confiscated all information carriers. The official reason for detentions was the alleged relation of the activists to the dissemination of political cartoons (a criminal case based on this reason had been launched before).

On 1 March 2006 at his press-conference the Head of KGB Sciapan Sucharenka announced that the opposition had been planning a number of provocations for their election day. He said: "The blood of victims will let the organizers of the protest action do anything they like. After this they will start seizing the official offices, railway stations and blocking the railway with the aim to stop the country's functioning". According to him, the detained members of "Partnership" were to have coordinated the provocations and the organization also prepared false minutes of the exit-polls, according to which the candidate to the presidential position Alaksandr Milinkievič won the election.

On 2 March 2006 Mikalaj Astrejka, Enira Branickaja, Cimafiej Drančuk and Alaksandr Šalajka received official charges on part 2 of Article 193 of the CC (organization or direction of the activity of public association or religious organization that infringes on individuality, rights and obligations of citizens). All four detainees were kept in the investigative isolator of KGB and after were moved to the isolator of the Ministry of Internal Affairs in Miensk.

On 4 August 2006 the judge of the court of Centralny district of Miensk Leanid Jasinovič, passed a sentence to the activists of the public association of election monitoring "Partnership". All of them were charged under Article 193<sup>1</sup> of the Criminal Code ("The illegal organization of the activities of a civic association, religious organization or foundation or participation in those activities"). Mikalaj Astrejka was sentenced to two years in minimum-security correctional labour facility, Cimafiej Drančuk to one year of minimum-security correctional labour facility, Enira Branickaja and Alaksandr Šalajka to 6 months of imprisonment.

The trial was closed, neither family members, journalists nor human rights defenders were allowed to attend the court.

On August 21, 2006 Enira Branickaja and Alaksandr Šalajka were released, as their term of arrest had come to the end.

Mikola Astrejka was released in November, as his penalty was substituted with a more lenient penalty-disciplinary works.

Cimafiej Drančuk was released on parole on 26 December 2006, after he spent 9 months in prison.

- **Zmicier Daškiewič**

On September 15, 2006, Zmicier Daškiewič was detained on suspicion of taking part in the activities of the unregistered organization "Young Front". He was called to the prosecutor's office to be interrogated as a suspect in a criminal case launched under Article 193<sup>1</sup>. Straight after being informed that there had been made a decision to detain him, Zmicier was taken to Minsk detention center. The arrest of Zmicier Daškiewič was sanctioned by the Prosecutor General of Belarus, P. Miklaševič.

The criminal case against the activists of the "Young Front" was initiated by the members of the Antiterrorist Committee. Dozens of people were questioned in the District Prosecutor's offices, in accordance with the KGB order, Apart from Zmicier Daškiewič, such young activists as Siaržuk Lisičonak, Aleh Korban and Barys Harecki were on the list of suspects. However, later criminal cases against those activists were ceased. Even before the sentence came into legal force, Zmicier Daškiewič was sent to the Škloŭ penitentiary in Mahiloŭ region to serve his sentence.

On November 1, 2006, Zmicier Daškiewič was sentenced by the judge of Kastryčnicki district court, Ala Bulaš, to one and a half years' imprisonment in a minimum security prison. The trial was held behind closed doors. The Minsk city court did not allow Zmicier to appeal and left the decision of the court of first instance in force.

## **Year 2007**

- **Anastasija Azarka**

The criminal case against youth activist Nasta Azarka was instigated under Article 193<sup>1</sup> of the Criminal Code — "organizing activity of an association, fund, or religious organization, which did not receive state registration or participation in such an organization". The case was launched on March 5, 2006 by the Department of Internal Affairs of Minsk Region Executive Committee. Nasta Azarka was suspected of active participation in illegal activity of unregistered public association "Young Front".

On September 4, 2007 Anastasija was found guilty and fined to 40 basic values.

- ***Nasta Palažanka***
- ***Zmicier Fiedaruk***
- ***Alaksiej Janušeŭski***
- ***Aleh Korban***
- ***Barys Harecki***

The criminal case was instigated on February 4, 2006 by Miensk city KGB department under Article 193<sup>1</sup> of the Criminal Code — “organizing activity of an association, fund, or religious organization, which did not receive state registration or participation in such an organization”. That day the police detained members of the Central Council of Young Front, during its meeting at a private apartment. Several dozens of the detained youth activists were released later, and Zmicier Fiedaruk and Aleh Korban were placed into the KGB detention center, where they spent three days as suspects in the criminal case. Later Barys Harecki, Alaksiej Janušeŭski, and underage Nasta Palažanka were also suspected in the case.

The charges were based on the printed materials found during searches in the apartments of Young Front members, and print outs of telephone conversations and audio-recordings of meetings held on September 29, 2006, January 25 and 29, February 1 and 4 of 2007. Zmicier Fiedaruk was charged with heading Peršamajski branch of Young Front, Aleh Korban — with heading Partyzanski branch, Alaksiej Janušeŭski — heading Zavodski branch, Barys Harecki — being press-secretary of the organization, and Nasta Palažanka — in heading the organizational department of Young Front. According to the prosecutor, the goal of Young Front was seizure of power through mass street actions.

The court hearings of the case were held on May 28–29 in Savecki court of Miensk. State prosecutor A. Mihonskaja suggested punishing Zmicier Fiedaruk, Alaksiej Janušeŭski, Aleh Korban and Barys Harecki with fines of 500 basic values, and Nasta Palažanka — with correctional labor. Judge Ruslan Aniskievič found the youth activists guilty of committing the crime and gave the following sentences: Zmicier Fiedaruk — fined to 40 basic values (about USD 600), Aleh Korban, Alaksiej Janušeŭski and Barys Harecki — fined to 30 basic values (about USD 450). Nasta Palažanka received a judicial warning.

- ***Ivan Šyla***

The criminal case against the underage youth activist Ivan Šyla from Salihorsk was instigated on May 10 by the prosecutor’s office of Miensk region. Ivan Šyla was charged under Article 193<sup>1</sup> of the Criminal Code with “organizing activity of an association, fund, or religious organization, which did not receive state registration or participation in such an organization”. Ivan Šyla was accused of “being completely aware of the fact that the Ministry of Justice rejected

state registration to Young Front; from November 26, 2006 he carried out illegal activity of that association and participated in its activities with the following circumstances. Being head and activist of the local structure of Young Front in Salihorsk, in order to achieve the goals established in the Statute of the organization, he took active part in the organization of events, some of which were organized with his direct participation:

No later than May 11, 2007, with the goal of recruiting new members of the organization, with the help of computer equipment he produced business cards and flyers on behalf of Young Front and put his phone number on them;

Before May 11, 2007 at the place of his residence he kept other attributes of Young Front (pins) with the goal of their distribution and involving new people in the organization;

No later than May 11, 2007, with the help of computer equipment he composed and produced brochures titled "Freedom to Political Prisoners" and his phone number, with the goal to involve new members, and distributed the brochures among residents of Salihorsk;

At the place of his residence, with the help of computer equipment, on behalf of Young Front, he produced newspaper "Svabodny Salihorsk", in which he spread information about activities of Young Front, and events organized by it. He also indicated his phone number, aiming at recruiting new members of the organization, and distributed the newspaper among Salihorsk residents;

In the period of January 18-20, 2007 he rented an apartment in the city of Salihorsk, where he kept printed materials, posters and bands of Young Front, in order to make its activities possible;

At the place of his residence, on May 30, 2007 he created "Plan of Activities of Salihorsk Young Front for June-December 2007";

On January 4, 2007, about 11.30 a. m. he distributed flyers on behalf of Young Front at Staravakzalny market place;

At the place of his residence, from 3.10 to 3.49 p. m. he gave a phone interview to a journalist of the European radio for Belarus and other journalists about organizing Young Front pickets on January 20, 2007;

On January 20, 2007 about 4 p. m. he organized a picket on behalf of Young Front, holding a poster "Freedom to Daškieveči";

On February 26, 2007 he applied to Salihorsk district executive committee with a petition about the work of public transportation system and other issues, publicly linking the results of the appeal with the activity of Young Front.

On September 4 Salihorsk district court tried Ivan Šyla. A. I. Čarnyševič was the state prosecutor. Judge V. Lapina found the youth activist guilty of the crime he was charged with (Article 193<sup>1</sup> of the Criminal Code of the Republic of Belarus) and gave a judicial warning to Ivan Šyla.

The verdict was appealed to Miensk regional court (judicial board for criminal cases). However, the complaint was rejected, and the judgment remained unchanged.

#### • ***Jaraslaŭ Hryščenia***

Jaraslaŭ Hryščenia, youth activist from Baranavičy, was charged under Article 193<sup>1</sup> of the Criminal Code — “organizing activity of an association, fund, or religious organization, which did not receive state registration or participation in such an organization”.

The decision to start criminal proceedings, made by prosecutor, senior adviser of justice A. Smal', says: “on April 20, 2007 under age Jaraslaŭ Hryščenia made the statement to Baranavičy city police department that he is voluntarily ceasing his activity in youth association “Young Front”, which had failed to go through the procedure of state registration. However, in fact he continued his participation in the activity of the unregistered association during the “Čarnobyl March” rally on April 26, 2007, which is proven by video materials”.

The trial over Jaraslaŭ Hryščenia began on September 10 in Baranavičy district court. The prosecutor asked to punish Jaraslaŭ with 1 year of conditional imprisonment. However, the judge Vasil Petrykaŭ ruled to fine the activist 930 000 Belarusian rubles (about USD 450).

## **Year 2008**

#### • ***Kaciaryna Salaŭjova***

On March 27, 2008 the trial of the youth activist Kaciaryna Salaŭjova, dismissed from the faculty of history and philology of the Polack state university in January 2008 during her 2<sup>nd</sup> year of studies, was to begin. Earlier, in the end of February she was charged under Article 193<sup>1</sup> of the Criminal Code (“organizing activity of an association, fund, or religious organization, which did not receive state registration or participation in such an organization.”) for her membership in the Young Front youth organization.

On 8 April 2008, Judge Alena Marozava from Polack Town Court accused Kaciaryna Salaŭjova of violating Article 193<sup>1</sup> of the Criminal Code of Belarus — participating in activities of Young Front. Kaciaryna was found guilty and sentenced to a fine of BLR 1,750,000, in spite of all the protests of Belarusian and international civic society which treat Article 193<sup>1</sup> as purely political measure contradicting international law. During the trial youth activists organized a picket of solidarity with Kaciaryna, for what several of them were brought to administrative responsibility later.

## **Years 2008–2009**

In December 2006 criminal cases under Article 193<sup>1</sup> against Michail Jakaučuk and Andrej Niesciarovič, the members of the unregistered organization “RNE”, were launched. In July 2007 Michail Jakaučuk was condemned to 6 months’ arrest. Andrej Niesciarovič managed to evade criminal persecution, but in May 2009 he was found guilty without conviction.

It is necessary to mention, that no case concerning Article 193<sup>1</sup> was solved in favor of the accused, all of them were found guilty in the end.

Apart from the cases which were settled in the court, there was registered a number of cases which had been started, but the investigation was soon suspended. These cases were connected with some other Young Front activists (Siarhiej Lisičonak, Siarhiej Marčyk, Andrej Cianiuta, Arsenij Jahorčanka, Kiryl Atamančyč and others), as well as with the activists of the Homiel Youth Centre “Hart” (Zmicier Siamionaŭ) and those of the “Partnership” (Andrej Panasik).

It is also to be noted, that there were registered many occasions when Article 193<sup>1</sup> was used by the authorities to threaten civic activists with criminal punishment. The activists received official warnings from prosecutors, as well as unofficial ones during their interrogation by the state special services. Official warnings from prosecutors concerning possible criminal proceedings against civic activists in case they don’t stop their activities on behalf of unregistered organization were received by some activists of Young Front (for instance, such warnings were received twice in 2009 and once in February 2010 by the Young Front activists from Bierašcie, Michas’ Iljin, Julija Paško and Ivan Stasiuk); by Belarusian Students’ Association, by Siarhiej Salaš (the initiative “For the clean Barysaŭ”), by Viktar Harbačoū (civic organization “For Free Development of Entrepreneurship” registered in Ukraine) and by Teresa Selivončyč (Poles’ Union in Baranavičy town).

Thus, Article 193<sup>1</sup> of the Criminal Code is used not only as a means of criminal responsibility, but also as a way of psychological pressure on the citizens who are being “too active” from the authorities’ point of view. It forces the activists to stop their activities or at least to restrain their ardour.

## ***Criminal case under Article 193<sup>1</sup> against religious organization***

In June 2006 Minsk city prosecutor's office brought a criminal case under Article 193<sup>1</sup> of the Republic of Belarus against a representative of a religious organization. 25-year-old citizen of Minsk Jaŭhien Voŭkaŭ was accused of activities on behalf of the unregistered *Movement of Unity (Mun's Church)*. As the member of "Viasna" Valancin Stefanovič stressed, human rights activists are concerned with the continuation of the practice of usage of this article.

*"Bear in mind that it is the first criminal case against representatives of religious organizations since 2006, when Article 193<sup>1</sup> came into force. The authorities haven't used this article for a certain period of time. There existed something like a moratorium on it. The last time the article was used was in the past year, when the activist of the Young Front from Polacak Kaciaryna Salaŭjova was tried under it. But now there has been brought another criminal case under this article,"* commented Valancin Stefanovič.

Thus, human rights defenders insist on the abolition of Article 193<sup>1</sup> of the Criminal Code of the Republic of Belarus.

*"The Assembly of Pro-democratic NGOs has launched a campaign for abolishment of this article. We think that it is a disgrace to have such an article in the Criminal Code. Secondly, it is quite surprising that after the addresses of the Parliamentary Assembly of the Council of Europe and the international human rights organizations calling on the Belarusian authorities to abolish this article, it is still used... We hope that our authorities will act reasonably and not develop that criminal case. It is very unlikely that Mun's Church can do any harm, though Article 193<sup>1</sup> does not demand from the investigative organs to prove that the activities of an organization present any harm. There is just a formal corpus delicti — "actions on behalf of an unregistered organization", whatever this organization does,"* he added.

Valancin Stefanovič also said: *"As far as I know, an expertise regarding Mun's Church was held and it was not proved that this organization stirs up religious hatred. And I believe that there are no official documents which ban activities of this organization in Belarus. But the essential thing is that Article 193<sup>1</sup> does not demand any proofs of harm, so, basically, member of any organization may become subject to criminal responsibility,"* he stressed.

It is also important that the investigator who was dealing with Jaŭhien Voŭkaŭ's case is the senior investigator on the most important cases of Minsk prosecutor's office S. Hrahoŭski, who earlier persecuted the *Young Front* activists Zmicier Fiedaruk, Barys Harecki, Aleh Korban, Nasta Palažanka and Alaksiej Janušėuski for "activities on behalf of unregistered organization".

On June 29, 2009 the investigator denied the witness Ihar Valuk in the right to use the lawyer's services during the interrogation, though he has concluded an agreement with the lawyer Paval Sapielka. Such refusal is absolutely unac-

ceptable, it rudely violates Article 62 of the Constitution that guarantees each citizen the right to legal assistance for realization and protection of rights and freedoms including the right to use the assistance of lawyers at court and other state organs at any time.

On the 20<sup>th</sup> of August Minsk City Prosecutor's Office has terminated criminal prosecution of Jaŭhien Voŭkaŭ, member of the Unification Church, Belarusian office, accused of illegal membership in the religious organization under Article 193<sup>1</sup> of the Criminal Code.

*"I was called to the prosecutor's office and told that the criminal case against me had been closed, they also gave me an official paper confirming this fact,"* told Jaŭhien Voŭkaŭ.

The official letter, signed by the senior investigator on the most important cases of Minsk prosecutor's office S. Hrahoŭski, informed Jaŭhien Voŭkaŭ that the preliminary investigation of the criminal case against him had been dropped on 18 August 2009 and on the basis of Article 29, part 1 paragraph 2 and articles of 250–251 of the Criminal Process Code, because of absence of corpus delicti in actions of the latter.

In December 2009 the criminal case against Jaŭhien Voŭkaŭ was started again, but soon stopped.

# **FREEDOM OF ASSOCIATION AND THE SITUATION WITH NON-GOVERNMENTAL ORGANIZATIONS**

## **Final report for 2009**

The situation with the right to freedom of association in Belarus has not seriously changed during 2009. In 2009, the main problems in the field of creating public associations in Belarus and performing activities on their behalf remained the same as before. Thus, the following have been detected:

- The denial of registration of public associations and political parties on dubious grounds (including the socio-political position of the founders of the association) was often practiced;
- The ban on the activities of unregistered public associations, foundations, political parties and religious organizations has not been abolished: Article 193<sup>1</sup> of the Criminal Code "Illegal organization of activities of a public association, religious organization or foundation or participation in those activities" still establishes criminal responsibility for those activities;
- Many registered NGOs and political parties' structures had a problem obtaining a legal address in the non-residential premises (conditions for non-governmental associations and political parties are worse than those for some forms of commercial organizations, whose founders' private apartments may be registered as an organization's legal address); it was also problematic for NGOs to ask governmental officials' permission every time they rented premises for holding their meetings;
- The procedure of receiving foreign donations has remained very complicated and the permission of the State for getting money for the realization of each individual project is still required, while the domestic sponsorship can be obtained only for achieving the goals defined by the State.

### ***Registration of public associations***

The facts of registration of several independent NGOs (especially of the movement "For Freedom") and of some local branches of political parties in 2008 and in the early 2009, had raised in some civil activists the hope for liberalization of registration procedures. But in 2009 those hopes were dashed. As it is known, during the period of January-April 2009 more than 15 citizens' groups applied for registration as a national public association in the Ministry of Justice. An even greater number of applications for registration was filed in this period

at the local level. However, the practice of registration has not changed and all these groups faced denials of registration.

During 2009 three political parties were refused registration: The Belarusian Christian Democracy (denied registration twice), Belarusian Party of Workers (a legal successor of the Belarusian Party of Labor, liquidated in 2004) and the Party of Freedom and Progress (it was its fourth denial in the past few years). Since 2000, Belarusian authorities has not registered any new political party. Even some registered political parties (like The BPF party) were denied registration of their local branches.

In 2009 many youth organizations and human rights associations faced the denial of registration. For instance, public human rights association "Naša Viasna" ("Our Spring") was refused registration twice, human rights association "Bierašciejskaja Viasna" ("Bierašcie Spring") — four times. Also such organizations, as the Assembly of Pro-Democratic Non-Governmental Organizations (Miensk), youth social organization "Young Social Democrats" (Miensk), youth public association "Modes" (Mahiloŭ), public association "Youth Christian Social Union Young Democrats" (Miensk), social cultural and educational association "Heritage" (Horadnia), Youth public association "Novy Kurs" ("New Destination") from Miensk, cultural and educational public association "Zalaty Leŭ" ("Golden Lion") from Słonim and other organizations were denied registration. In most cases the grounds for refusal of registration were unreasonable and were obviously determined by the political will of the authorities to prevent the legal existence of those associations. Courts never satisfied complaints against the decisions of the Ministry of Justice regarding registration denials.

The total number of registered organizations has not increased in comparison with the previous years: according to the Ministry of Justice, only 94 new associations (including 3 international, 16 national and 75 local associations) and 8 new foundations (one international foundation among them) were registered in 2009.

*The number of NGOs has not grown:*

	30 <sup>th</sup> October 2003	1 <sup>st</sup> January 2004	1 <sup>st</sup> January 2005	1 <sup>st</sup> January 2006	1 <sup>st</sup> March 2007	1 <sup>st</sup> January 2008	1 <sup>st</sup> January 2009	1 <sup>st</sup> January 2010
<i>The number of newly registered public associations (for a certain year)</i>	94	155	61	85	100	94	—	94
<b>Total number of registered public associations (for a certain date)</b>	2248	2214	2259	2247	2248	2255	2221	2225

Thus, the statistics shows that each year the organs of justice registered certain public associations just to compensate the decrease of the total number of NGOs, determined by the voluntary or forced liquidations.

On the 26<sup>th</sup> of January 2009 the public human rights association "Naša Viasna" applied for registration to the Ministry of Justice. Among the founders of the organization were human rights defenders, journalists and civil activists from different regions of the country that had been previously working in the Human Rights Center "Viasna", which was liquidated by the decision of the Supreme Court of Belarus in October 2003. In 2007, the human rights defenders tried to legalize their activities, but the Ministry of Justice, as well as the Supreme Court of Belarus, refused to register them, despite the decision of the UN Human Rights Committee, alleging that the liquidation of "Viasna" in 2004 was a violation of freedom of association. In the Committee's decision the fact of "Viasna" liquidation was interpreted as a violation of the right to freedom of association on behalf of Belarusian authorities, which were recommended to improve the situation. However, that UN recommendation was ignored by the Government.

On March 11, 2009 (in violation of the positions of law stating that the registration documents must be reviewed within one month after they have been submitted) information "About the refusal of State registration of public human rights association "Naša Viasna" appeared on the official website of the Ministry of Justice of the Republic of Belarus. On March 19, 2009 an appeal against the decision of the Ministry of Justice regarding the denial of "Viasna" registration was submitted to the Supreme Court. On March 12, 2009 the offices of the Helsinki Committee in Sweden, Norway, Netherlands, Moscow and Belarus sent a joint appeal to the Belarusian authorities calling upon them to reconsider the negative decision on the registration of "Naša Viasna". According to the Helsinki Committees, the reasons for non-registration of the organization, given by the Ministry of Justice, can not be considered unfounded. It was also noted that "creating a free field for the legitimate activities of human rights groups would have proved that Belarus is ready to build civil society and to improve the situation in the sphere of human rights." However, the Supreme Court has not considered the arguments of the founders of the association "Naša Viasna" as sensible and did not change its decision regarding "Naša Viasna" registration.

**Another try of the founders of "Naša Viasna" to re-register the organization was not successful either. On May 28, 2009 the representatives of "Naša Viasna" received the second denial of registration from the Ministry of Justice. Among the grounds for refusal of registration were mentioned the fact of civil and criminal prosecution of the association's co-founders (though such ground for refusal is not mentioned in the law) and some technical mistakes in the submitted documents (like, not all co-founders had written their home phone numbers apart from their mobile phone numbers). On the 12<sup>th</sup> of August the Supreme Court of Belarus turned down**

the appeal against the decision of the Ministry of Justice on the non-registration of "Naša Viasna". The third attempt of registration failed as well, though all the reasons for denial were, as usually, **unconvincing and** groundless. Thus, the human rights defenders decided to stop trying to register the organization and applied to the UH Human Rights Committee, complaining for systematic discrimination of the right to the freedom of association in Belarus. According to Aleš Bialacki, the vice-president of the International Federation for Human Rights and the former Head of the Human Rights Center "Viasna", re-elected as the Head of "Naša Viasna", the process of registration of the organization was of no less importance than the fact of its registration, because it showed clearly the mechanism of violating the right for freedom of association, implemented by the Belarusian State.

**Minor technical mistakes also served as the basis for the systematic denials of registration of the human rights organization "Bieraścjejskaja Viasna", a branch of "Viasna" in the Bieraścje region. During 2009, "Bieraścjejskaja Viasna" tried to get registration as a separate local union four times (such attempts were also made by the organization in 2008). Co-founders of "Bieraścjejskaja Viasna" were correcting all the mistakes identified in the document on the denial of registration, but each time judicial authorities found another grounds for refusal of organization's registration.**

**In the end of March Horadnia Regional Executive Committee refused to register the Horadnia branch of the political party "BPF" and the Horadnia branch of the public association BPF "Adradžeńie". This refusal was confirmed by the decision of the regional court, despite the fact that it was justified solely by the fact that the documents submitted for registration of "Bieraścjejskaja Viasna" had been printed in the wrong font which didn't correspond to the official standarts (there is no such ground of refusal in law).**

**On July 2, 2009 the Supreme Court upheld the decision of the Ministry of Justice on the non-registration of the public association "Youth Christian Social Union Young Democrats". Co-founders of the association believe that there were no grounds for refusal of registration and those minor mistakes found in the documents submitted for registration could have been easily corrected if the Ministry of Justice allowed to do so. However, the Ministry officials qualified the situation as "unsubmitting documents required for registration". According to the representatives of "Bieraścjejskaja Viasna", they were once again convinced that the actions of the Ministry of Justice were aimed at preventing the existence of registered NGOs and delaying the development of the country's civil society.**

**The Assembly of Pro-Democratic Non-Governmental Organizations of Belarus also faced the refusal of registration in the spring of 2009, it was the second denial of registration received by the Assembly. On 9<sup>th</sup>**

**April 2009 the leaders of the Assembly of NGOs received a letter from the Ministry of Justice informing them about the refusal of state registration.** The Ministry of Justice refused to register the organization, explaining its decision by alleged violations during the establishment of the Assembly of NGOs. In particular, the Ministry stated that the treaty on its establishment was invalid, because the heads of the member organizations signed it without the agreement of the governing bodies of their organizations (which was not true, anyway). Another pretension was that the name of the organization allegedly did not point at the subject of activities of its members. Representatives of the Assembly consider the refusal politically motivated, as the treaty on the establishment of the Assembly was signed by the heads of the member organizations after they were authorized to do it by the assemblies of their organizations, thus abiding by all legal procedures. **The Assembly of NGOs was founded by 7 public associations, including the Belarusian Helsinki Committee, Center "Supolnaśc", BPF "Adradženie", Center for Human Rights and three other public organizations from Verchniadžvinsk, Viciebsk and Mahilou. On June 4, 2009 the Supreme Court of Belarus refused to satisfy the complaint against the Ministry's decision on non-registration of the Assembly of NGOs. In December 2009, the founders of the Assembly held another constituent meeting and applied for new registration in January 2010.**

**On March 19, 2009 the Department of Justice of the Mahilou regional executive committee refused to register the public association "Center of Youth Initiatives "Modes" (Mahilou). The reason for refusal was alleged violations in the statute of the association. The officials also offered the co-founders of "Modes" to consider the possibility of registration in the form of institution. The refusal to register the association was also confirmed by the decisions of the courts.**

**On June 25, 2009 the central department of justice of Horadnia regional executive committee denied registration to the culture and educational public association "Spadčyna" from the town of Biarozauka on the grounds that the registration documents allegedly did not comply with legislation. The Head of the organization, Siarhiej Trafimčyk, believes that the denial of registration indicated the reluctance of authorities to see another legitimate democratic organization in the legal field. Members of "Spadčyna" tried to appeal against the decision in court, but the Horadnia Regional Court, and later the Supreme Court rejected the claim.**

In November 2009 the main justice department of Horadnia regional executive committee denied the state registration to the culture and educational association "Załaty Leŭ" ("Golden Lion") from Słonim. The founders of "Załaty Leŭ" used to be members of another NGO — Słonim youth association "Vietraž", liquidated several years ago by court on the ground that it did not possess legal address. One of the founders of "Golden Lion", Aleś Masiuk, stressed that he saw the decision as politically motivated. "The authorities continue the practice

of non-registration towards those people whom they consider as opposition. We could have satisfied the pretensions of the registering organ by introducing the necessary corrections to the charter the same day, but they simply denied us registration,”— said Mr. Masiuk.

On the 29<sup>th</sup> of December the Horadnia Regional Court, after considering the complaint of the members of “Załaty Leŭ” against the justice department of the Horadnia region executive committee that had refused to register *the organization*, left the decision on non-registration in force. As stated by the representative of the NGO Aleś Masiuk, the judge confessed that most reasons for non-registration of the NGO were wire-drawn, but agreed that according to the registration documents the organization Board had too many powers, which allegedly contradicted to the Civil Code.

On April 15, 2009 the Ministry of Justice denied state registration to the Belarusian Christian Democracy (BChD), due to the lack of correspondence between the organization’s documents and the questioning of its founders, held by the Ministry. The constituent meeting of the party took place in late February; after the documents for registration had been provided almost each of the founders was called by the representatives of the local ideological committees, KGB and police. Some BChD members were called by the administration of their workplace and were required to renounce their signatures under the threat of dismissal. It is important that the verification of the registration documents of the BChD was held personally by the Deputy Minister of Justice of Belarus Aleh Śliżeŭski, from whom BChD activists received a negative answer concerning non-registration of BChD. But the next day, April 16, one of the leaders of the Belarusian Christian Democracy party Alaksiej Šein was informed by an official of the Ministry of Justice that the decision to deny registration to the party had been suspended. The official reason of the suspension was that numerous claims of the BCD members and new information which might influence the decision on state registration of the BChD had been received. The final decision was made after verifying the new information, but it was still negative.

On the 22<sup>nd</sup> of July 2009 the Supreme Court dismissed a complaint of the Belarusian Christian Democracy party and agreed with the position of the Ministry of Justice regarding the non-registration of BChD. The decision was made by the judge Valery Samaluk. The co-Chair of BChD, Alaksiej Šein, commented on the issue: “The reasons of BChD’s registration denial are clearly political, our members have been pressed by the Ministry of Justice, KGB, the Ministry of Internal Affairs and the local administrations.”

BChD co-founders tried to register the organization once again the same year. On December 9 the Ministry of Justice denied state registration to the Belarusian Christian Democracy party for the second time. Inaccurate information about the regional assemblies of the party founders was cited as the official reason. It was the second registration denial to BChD in 2009. According to co-Chair of the party Vital Rymašeŭski, there were dozens of cases when founders of the party were summoned to the ideological departments of executive com-

mittees or educational establishments and threatened. As a result, signatures were revoked by five persons.

On the 15<sup>th</sup> of June 2009 the Ministry of Justice has denied state registration to the Party of Freedom and Progress (PFP) on the basis that "representation requirements for the PFP founding conference were violated on many occasions". Also "a spot check of the list of the PFP's alleged founders established that many people had been misled into signing it". The Ministry's decision was supported by the Supreme Court.

On the 15<sup>th</sup> of December 2009 the Supreme Court of Belarus dismissed the appeal of the organizing committee of the Belarusian Party of Workers against the non-registration of the latter by the Ministry of Justice. Alaksandar Buchvostaŭ, Chairperson of the organizing committee, referred to cases of intimidation of founders of the party, as a result of which some of them revoked their signatures. He also stated that the organizing committee would start preparing to a new constituent assembly.

During 2009, two cases concerning registration denials to national public organizations were terminated in the Supreme Court. In the case of the Centre for Support of Chernobyl Initiatives, the Ministry of Justice recognized its previous statements about the falsification of signatures of the organization's founders as incorrect, because those statements had not been confirmed by the results of numerous graphological expertises. Thus, the Ministry registered the association without waiting for a court decision (in this case there was obviously a sort of agreement between the founders of the Centre for Support of Chernobyl Initiatives and the Ministry officials, because the founders were invited to the Ministry and asked about their plans for the future). In another case, regarding social patriotic public association "Haryzantal", even though the expertise did not confirm the fact of signature falsification of one of the organization's founders, the Supreme Court denied "Haryzantal" registration on March 11, 2009.

## ***Changes in legislation***

The reasons for registration denial are formulated in Belarusian law very vaguely, which gives the officials a perfect opportunity to make absolutely groundless refusals. During 2009, government made statements about possible simplification of registration process for political parties and public associations by the means of introducing amendments into the Law "On Political Parties" and the Law "On Public Associations". State media disseminated this information, stressing the fact that the process of registration would become much easier for NGOs, for instance, such reason for registration denial as "non-submittance of all necessary documents" would be eliminated. But a thoughtful analysis of the proposed amendments raises some doubts about

their role in improving the situation with registration. On the contrary, the new Laws might give the State bodies some more legal possibilities to justify their dubious registration denials, as the new Laws contain more grounds for denial of NGOs' registration. For instance, now an NGO can be denied registration, if its statute does not comply with the requirements of law regarding not only organization's aims, methods and territory of activities, but regarding any other positions of the Statute.

A new ground for denial of registration is going to be introduced into the legislation — "submitting by the organization documents and/or information, including fake or invalid documents, which do not comply with the requirements of law". This rule is not aimed at simplifying the process of registration, though it definitely makes it easier for governing officials to deny "unwanted" organizations registration. The proposed bill eliminates the possibility of *correcting inaccuracies in the documents submitted for registration*. Generally, the new version of the law is aimed at bringing legislation into line with the current practice of groundlessly denying registration to those public organizations, legalization of which is not desirable for the authorities. Other minor changes in the law are simply technical, but even those can not be regarded as somehow simplifying the registration procedure. For example, now the initiative groups submitting documents for registration should provide not only a paper, but also an electronic version of their organization's statute. It is highly probable that the new bill could cause the actual re-registration of existing associations, as they had not submitted electronic versions of their statutes when registering.

Some of the registration denials which occurred last spring were actually based on the provisions of the new bill which have not come into force yet. For instance, in the case of the Belarusian Christian Democracy the grounds for registration denial listed in the new bill were used, as well as the procedure of "suspending of the registration process", which is not included in the current edition of the law.

However, the new bill introduces some positive changes as well: now newly registered organizations should perform fewer activities, as the Ministry of Justice announced in March 2009. Now the newly registered organizations should not undergo many administrative procedures (such as obtaining permission for possessing its own seal, getting registered at the tax office and at the social security office, obtaining the registrational indexes, etc.). Now, after registering an organization, the registering authority will report the fact to the administrative bodies mentioned above, thus all administrative procedures will take place automatically. However, it is surprising that this clearly progressive measure that facilitates post-registration activities of associations was not implemented by any particular legal act, but it has been simply introduced into the practice of the organs of justice.

This is the only real change in registration practice in 2009: now NGOs are registered with the tax authorities and other public bodies automatically after

their registration (before they did it themselves). However, this fact in no way diminishes the existing registration barrier and only influences those organizations which have managed to get registered in the end.

In addition, a certain number of non-governmental organizations exists in the form of institutions which, according to the Presidential Decree #16 from 16<sup>th</sup> January 2009, are being registered under the same procedure as commercial organizations. Currently, the registration procedure of those non-commercial organizations is very close to the so-called "stating way" of registration (a minimum number of documents should be submitted for registration, no documents are required to confirm the legal address, the registration process takes several days and in most cases ends in obtaining legal status by the organization). Thus, according to reports, in 2009 the organizational form of institution became extremely popular among the non-profit organizations which were unable to register in the usual forms, such as public association or foundation. So many organizations which had been previously denied registration as public associations obtained a legal status of an institution (institutions differ from public associations by their organizational structure). This way such organizations, as the youth association "Right Alliance", "Modes" and some others obtained registration. However, in autumn 2009 a couple of organizations regarded as the regime's opponents had been denied registration even in that organizational form (which is recognized by law as a major violation of the established stating way of registration.) In late 2009 it became known that, by the initiative of the President Lukashenka, a preparation of a draft law "On Non-Commercial Organizations" had started, which could potentially complicate the registration process of those forms of non-governmental organizations which are not subject to special regulations and are being registered in a stating way.

### ***Criminal liability for performing activities on behalf of unregistered organizations***

In 2009, government continued to use Article 193<sup>1</sup> of the Criminal Code, intimidating social activists in order to force them to stop their activities within unregistered NGOs. In August, an activist of the Bierašcie branch of the Young Front, Mikhail Iljin received a warning from the prosecutor's office which stated that if he did not cease his civil activities in the unregistered organization he would become a subject to criminal responsibility. Another warning from the prosecutor's office was received by the leader of the Bierašcie Branch of the "Young Front" Julija Paško, on 28<sup>th</sup> December 2009. It should be also noted that the number of such warnings issued by the prosecutor's office can be much higher than that registered.

Members of the unrecognized by the authorities Union of Poles in Belarus were also threatened with Article 193<sup>1</sup>. On 19<sup>th</sup> February 2009 Teresa Silivončyk,

the Head of the Baranavičy branch of the Union of Poles in Belarus (UPB), received a warning from the prosecutor's office about criminal responsibility for activity in an unregistered organization. According to Andrzej Poczobut, member of the council of the organization, it hasn't been the first case when the authorities decided to use notorious article 193<sup>1</sup> of the Criminal Code against members of the Union of Poles in Belarus. As Mr. Poczobut said, activists of the Union of Poles were pressed openly all over the country in order to make them leave this organization. People were called in for conversations in the KGB, the Ministry of Internal Affairs, where they were threatened with criminal persecution.

In May 2009, for the first time since April 2008, a new criminal sentence under Article 193<sup>1</sup> was passed. Andrej Nešciarovič (Homiel) was found guilty, but granted amnesty. The case against him was launched in 2007 when the activists of the neo-fascist pro-Russian organization (RNE) in Homiel were prosecuted under Article 193<sup>1</sup>. Since the time he had been accused, Nešciarovič was hiding in Russia, but returned to Belarus when granted amnesty.

In summer 2009, a case against the representative of the unregistered Unification Church, Jaūhien Vokkaŭ, was launched under Article 193<sup>1</sup>, but soon it was ceased. Nevertheless, in December 2009 it became known that this case had been re-launched.

Generally, for the period 2006–2009, human rights defenders possessed information about 17 persons that had been accused under Article 193<sup>1</sup> for their activities in unregistered associations. Thus, the numbers are the following:

2006 — 6 accused,

2007 — 9 accused,

2008 — 1 accused,

2009 — 1 accused.

No case was solved in favor of the accused.

In the beginning of September the activists of the Czech NGO "Civic Belarus" received an official paper from Belarusian Ministry of Justice, which stated that Belarusian authorities were discussing the possibility of changing criminal punishment for participating in activities of unregistered organizations into the administrative penalty. This was the first signal that the authorities might revise Article 193<sup>1</sup> and reduce punishment for the activities of unregistered organizations. However, it was not the possibility of abolition of the ban of unregistered organizations' activities and the exclusion of Article 193<sup>1</sup> being discussed, but the mere reduction of liability for such activities. Later, the intentions to change the legal provisions concerning the responsibility for acting on behalf of unregistered organizations were confirmed by the representatives of the Ministry of Justice (for instance, during the annual *Human Dimension* Implementation Meeting in

Warsaw) and the members of the Presidential Administration. However, those statements had just a declarative character: no real steps towards the revision of Article 193<sup>1</sup> of the Criminal Code were taken, no bill concerning abolition of Article 193<sup>1</sup> was considered in the Parliament.

### ***Written warnings***

On January 6, 2009 the Republican Public Association "Belarusian PEN-Center" received a written warning. The warning was based on the organization's inspection held by the authorities (in spite of the fact that in the late 2008 a 6-month suspension of conducting such inspections was announced). "Belarusian PEN-Center" was accused in the absence of a legal address, even though a valid rental contract was available. It was also accused (in violation of procedural law, by the way) in conducting an "unauthorized communication" via e-mail, as well as in an illegal protection of its members (the organization made statements of protest when the issue of the magazine "Arche" was confiscated by customs officers at Belarusian-Polish border as an "extremist publication").

In February 2009, Homiel Regional Department of Justice issued a warning to the *youth local history public* association "Tałaka", which had existed in the region for more than ten years. The official reason for the warning, mentioned in the order of the Head of the Department Vital Makarevič, is the use by the organization of unregistered national symbols on its website and in its advertisements spread by "Tałaka" in the region. The members of the association believed that the real reason for the written warning was the recent increase of their activities.

According to the members of the public association "Belarusian School Society", after the organization held a number of events in high schools in late 2008, the members and leaders of BSS who worked as teachers were pressed upon by their employers.

### ***Access to premises***

The necessity for national and all other associations to possess an office in a non-residential building is a serious obstacle on the way of creating new organizations. Also for many already registered NGOs and party structures the necessity of obtaining a legal address in non-residential premises remains a problem. It turns out that certain legal conditions for organizing the work of NGOs and political parties are worse in comparison with those for commercial organizations that may be registered, for instance, in the private apartments of their founders. During 2009, many organizations published statements on the difficulties with the rental payments and in some cases those difficulties caused termination of organizations' activities.

In early February, a public association "For the European Mastoŭščyna" (Masty town in Horadnja region) did not manage to get a legal address in the administrative building, which resulted in the non-registration of the organization. Masty regional Executive Committee refused to provide Aleś Zarembiuk with a legal address for the registration of a public organization, alleging that there is a lack of free premises.

In May 2009, authorities continued threatening BPF members to terminate their office lease. The landlord (public services controlled by authorities) expressed dissatisfaction with the tardy rental payments. The lease agreement of the office, according to the landlord, will not be prolonged. The party is also facing the threat of losing its legal address, which will probably lead to the loss of registration. The situation with the premises remains complicated for the organization, as the party has no money to pay the unreasonably high cost of the rent.

In April 2009, the Barysaŭ branch of the public association "Children in Need" was forced to cease its activities because of its inability to pay the rent for municipal property. Numerous requests of the organization to provide it with a reduced rate of rent, addressed to the local authorities, were not satisfied.

In February 2009, the local authorities of the Mozyr city (Homiel region) refused to assist the local branch of the "Young Front" in finding a legal address, explaining it by the fact that law prohibits to interfere with the activities of public organizations. On the 6<sup>th</sup> of February, the founders of the organization addressed local authorities with the request to help them finding a place for holding the constituent assembly, which can also be registered as a legal address of the organization (because, as already known, the registration of a public association is impossible without obtaining a legal address). According to the founders of the organization, the requirement for a public organization to have a registered address is one of the major obstacles on the way of establishing an NGO, as local authorities practice putting pressure on landlords who dare to conclude such lease contracts. Different offices of the "Young Front" have applied to the local executive committees of more than 30 cities of Belarus, requiring to provide them with premises for holding the constituent assembly and, accordingly, with legal addresses, necessary for the registration of local offices of the organization. But none of the requests were satisfied.

On 18<sup>th</sup> February 2009, the Association for Protection of Monuments was forced to abandon the premises in the center of Miensk, where it has been located for more than 20 years. Refurbishment of the building in 1980s was financed by the organization and the house belonged to it. In 2004 the State nationalized the building, turned its ex-investor into a leaseholder and in 2008 forced the organization to move out. The Head of the Association, Anton Astapovič, thinks that all the promptness of moving them out can be explained by its active civil position: the organization often revealed to the publicity the facts of violations of the law on the protection of historic and cultural heritage, performed by the State.

Non-governmental organizations still face problems when trying to rent premises and register them as a legal address for performing their daily activities, as well as when trying to find a place for holding special events or meetings.

The founders of the Social Civic Organization "Belarusian Christian Democracy" had troubles when looking for a place to organize their constituent meeting on 28<sup>th</sup> February 2009. The representatives of 10 institutions denied in renting their premises for political reasons (including the representatives of the Miensk Educational Center (IBB), of the Youth Theatre of Estrade, of the cinemas "Aúrora" and "Centralny", of the Central House of Military Officers, of the House of Culture for the Railway Workers and those of MAZ, MTZ, "Sukno" and the House of the Republic). After the founders of "BChD" decided to organize their meeting in the center of Miensk, in the street, the authorities found a place for them very quickly. But at the same time, local authorities in the regions were creating difficulties for the members of "BChD" in organizing local meetings to elect delegates who would go to Miensk (the total number of the local meetings resulted in 63.) The authorities also threatened some members that they would be fired (or excluded from their colleges) if they took part in the constituent meeting of "BChD". On 28<sup>th</sup> February, on the day of the constituent meeting, 11 delegates going to the forum, were detained in Bieraście.

The administration of the Miensk Educational Center (IBB) agreed to rent its premises for the organization of an important forum of Belarusian NGOs-VI Congress of Non-Governmental Organizations and Initiatives which took place on 6-7<sup>th</sup> March 2009. But, as in case with "BChD", the organizers had many problems preparing for the event. For instance, the Homiel Region Executive Committee did not give its permission for the meeting of Homiel NGOs and initiatives. According to Uładzimir Kacora, the Deputy Head of the National Public Association "Legal Initiative", the meeting of organizations and initiatives had to take place in the House of Children and Youth Creativity "Junactva". The organizers managed to agree orally on the rental of the premises with the director of "Junactva". But, as the building belongs to the local authorities, Mr. Kacora requested an official permission for carrying out the meeting from Mr. Kiryčenka, the Deputy Head of the regional Executive Committee on ideological issues. Soon the director of "Junactva" called Mr. Kacora and told him that he would not be able to rent him the premises. He did not explain anything, saying that he could not discuss this issue on the phone.

In May 2009 the annual congresses of Belarusian Association of Journalists and of the oppositional Belarusian Party of Communists took place in Miensk. On 20<sup>th</sup> June 2009 a meeting of the BPF Party members, as well as the meeting of supporters of the European way of development for Belarus was organized in Miensk. In December the meeting of the BPF party took place. The Organizing Committee of the V Congress of Belarusians of the World, which had been scheduled by the World Alliance of Belarusians "Baćkaŭščyna" ("Fatherland")

for 18–19<sup>th</sup> July, 2009, reported that they did have problems finding premises for holding the Congress, but finally they were granted premises by the Minsk City Executive Committee. At the same time, many registered organizations and initiative groups creating new organizations have problems in finding premises large enough for holding their meetings.

Civil Human Rights Organization "Naša Viasna" faced some problems when searching premises for holding its ordinary constituent meeting in the end of April 2009. Almost all organizations, asked by the founders of "Naša Viasna" to rent them premises for holding a meeting, refused to do that. As a result, the founders of "Naša Viasna" had to organize their meeting in the office of the BPF party.

The initiative group aiming to re-register Belarusian Party of Work, liquidated in 2004, was also complaining that it had difficulties organizing its constituent meeting.

The representatives of the unrecognized by Belarusian authorities Union of Poles in Belarus planned to participate in the meeting, dedicated to the election of delegates to the congress of the "official" Union of Poles, but were not allowed in by the authorities.

### ***Belarus does not abide by the decisions of the UN Human Rights Committee***

Belarusian Government did not abide by the decisions of the UN Human Rights Committee, according to which registration denials and liquidations of public associations in Belarus are considered as the facts of violation of the Covenant on Civil and Political Rights. At the moment there have been adopted three resolutions of the UN Human Rights Committee concerning the violation of freedom of association in the Republic of Belarus. These cases are the following:

- denial of registration of Human Rights Civic Organization "Helsinki-XXI";
- judicial liquidation of Homiel Civic Organization "Civil Initiatives";
- judicial liquidation of the Civic Organization "Human Rights Centre "Viasna".

Numerous attempts to make the Government abide with the UN Committee decisions by appealing in the national courts were not successful, thus mentioned above public associations continue working as unregistered organizations and their members risk becoming subject to criminal responsibility for their activities.

On 23<sup>rd</sup> March 2009 the civil panel of Minsk City Court have rejected the complaint against the decision by the Ministry of Foreign Affairs, lodged by the

members of the Homiel civic organization "Civil Initiatives" liquidated in 2003, denying the Civil Initiatives movement its rights to legal activity, though the UN Committee had adopted a decision stating that the organization's liquidation by Belarusian authorities represents the fact of a violation of the right to association. Thus, the Foreign Ministry, which is in charge of implementing international treaties within Belarus, ignored the resolution of the UN Human Rights Committee and did not make any steps towards restoring violated rights of Belarusian citizens.

In 2004 Aleś Bialacki, the Head of the civic organization Human Rights Center "Viasna" liquidated in 2003, sent an appeal to the UN Human Rights Committee. On 24<sup>th</sup> July 2007 the UN Committee adopted Communication No. 1296/2004 on the base of individual complaint, concluding that the dissolution of "Viasna" was a violation of Article 22, paragraph 1, of the International Covenant on Civil and Political Rights. The Committee also concluded that, according to Article 2, paragraph 3 (a) of the Covenant, the claimants (the members of "Viasna") were entitled to an appropriate remedy, including the re-registration of "Viasna" and compensation. After that Mr. Bialacki requested the Ministry of Foreign Affairs to inform him what steps had been taken by the Ministry to implement the UN Committee recommendations regarding the abolition of the registration of "Viasna".

In April 2009 Mr. Bialacki received the response from the Ministry of Foreign Affairs, stating that Belarus does not consider the decisions of the UN Human Rights Committee as binding, but sees them as having a recommendational character. Thus, Belarusian authorities are not going to implement the decisions of the UN Human Rights Committee.

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It should be mentioned that the EU-Belarus dialogue became a factor that led to a certain liberalization of legislation in the sphere of non-governmental organizations' activities. It was under the influence of this factor that government performed democratization in some fields, or at least declared about its intentions of doing so in the future (for example, admission of the probable abolition of Article 193<sup>1</sup>).

But in general, since February 2009, when the period of suspension of the EU sanctions against Belarusian officials was extended, no improvements have happened in the sphere of the freedom of association: Article 193<sup>1</sup> of the Criminal Code was not abolished; the authorities did not register any new political party and, in practice, the registration process of public associations was not simplified. The first steps towards improving the situation with the freedom of association in Belarus should contain the abolition of Article 193<sup>1</sup> and the exclusion of all legislative acts which ban the activities of unregistered civil associations, as well as a real simplification of registration procedures of pub-

lic associations (at least making the registration process of civil organizations similar to that of commercial organizations). Moreover, this simplification should be proved by the registration of those associations and parties that had been previously denied registration or liquidated by court decisions. It is also highly important that Belarusian authorities abide by the decisions of the UN Human Rights Committee concerning the violation of freedom of association by the means of forced liquidations and non-registrations of NGOs.